

**State of Maine  
Board of Licensure in Medicine  
137 SHS 161 Capitol Street  
Augusta, Maine 04333-0137  
Minutes of October 9, 2012  
INDEX**

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I. Call to Order .....	1
A. Amendments to Agenda.....	1-2
B. Scheduled Agenda Items .....	2
II. Complaints	
1. Review Draft Letters of Guidance	
a. CR 12-52 Donald G. Blagdon, M.D. ....	2
b. CR 12-55 Gilbert Wilcox, M.D. ....	2
c. CR 12-75 Ratul Raychaudhuri, M.D. ....	2
d. CR 12-77 Douglas G. Couper, M.D. ....	2
2. CR 12-89 .....	2
3. CR 12-145 .....	2-3
4. CR 12-88 .....	3
5. CR 12-50 .....	3
6. CR 12-84 .....	3
7. CR 12-109 .....	3-4
8. CR 12-111 .....	4
9. CR 12-110 .....	4
10. CR 12-115 .....	4
11. CR 12-121 .....	4-5
12. CR 12-34 .....	5
13. CR 12-91 .....	5
14. CR 12-114 .....	5
15. CR 12-139 .....	5
16. CR 12-140 .....	5-6
17. CR 12-143 .....	6
18. CR 12-144 .....	6
19. CR 11-511/12-24 .....	6
20. CR 11-115/12-24 .....	6
III. Assessment & Direction	
21. AD 12-128 (CR 12-201) .....	6
22. AD 12-149 (CR12-202) .....	6
23. AD 12-158 (CR12-203) .....	6
24. AD 12-187 (CR12-204) .....	6-7
25. Intentionally Left Blank	
26. Intentionally Left Blank	
27. Complaint Status Report (FYI) .....	7
28. Consumer Assistant Feedback (FYI) .....	7
29. Physician Feedback (FYI) .....	7
IV. Informal Conference CR11-479/12-22 - Catherine A Lockwood, M.D. ....	7

V.	Minutes of September 11, 2012 .....	7
VI.	Board Orders & Consent Agreement Monitoring & Approval	
	A. Board Orders	
	1. Cesar O. Garcia, M.D. CR 10-476 Board Order.....	7
	B. Consent Agreement Monitoring and Approval	
	1. Monitoring Compliance Report (FYI) .....	7
	2. Andrew Fletcher, M.D. ....	7-8
	3. Linda Kenniston, M.D. ....	8
	4. Joshua Werblin, M.D. (FYI) Ms. MacDonald .....	8
	5. James Iannazzi, M.D. (Course approval) .....	8
	6. Paul Tessier, M.D. ....	8-9
	VII. Adjudicatory Hearing (None)	
VIII.	Remarks of Chairman	
	A. MaineCare regulations on narcotic prescriptions .....	9
IX.	Executive Director's Monthly Report.....	9
	A. Complaint Status Report (FYI).....	9
	B. Policy Review Processing License Apps Begins Upon Receipt.....	9
	C. Board Education PowerPoint Presentation (FYI)	
X.	Medical Director's Report	
	A. Mainecare Opioid Workgroup .....	9-10
XI.	Remarks of Assistant Attorney General (None)	
XII	Secretary's Report	
	A. List A	
	1. M.D. List A Licenses for Ratification .....	10-11
	2. P.A. List A Licenses for Ratification.....	11
	B. List B Applications for Individual Consideration	
	1. Sebastien Duclos, P.A.-C.....	11-12
	C. List C Applications for Reinstatement (None)	
	D. List D Withdrawals	
	1. List D (1) Withdraw License Application	
	2. List D (2) Withdraw License from Registration .....	12
	3. List D (3) Withdraw License from Registration - Individual Consideration (None)	
	E. List E Licenses to lapse by operation of law .....	12-13
	F. List F Licensees requesting to convert to active status (None)	
	G. List G Renewal applications for review (None)	
	H. List H. Physician Assistant Schedule II Authority Requests for Ratification	
	1. Applications to Renew Schedule II Authority (None)	
	2. Applications for New Schedule II Authority .....	13
XIII.	Standing Committee Reports	
	A. Public Information Committee .....	13
XIV.	Board Correspondence.....	14
XV.	FYI .....	14
XVI.	FSMB Material (None)	
XVII.	Other Business (None)	
XVIII.	Adjournment .....	14

**State of Maine  
Board of Licensure in Medicine  
137 SHS 161 Capitol Street  
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**BOARD MEMBERS PRESENT**

Gary R. Hatfield, M.D, Chairman  
David R. Andrews, M.D.  
Louisa Barnhart, M.D.  
Cheryl Clukey  
David H. Dumont, M.D  
Dana Dyer  
David D. Jones, M.D.  
David Nyberg, Ph.D.

**BOARD STAFF PRESENT**

Randal C. Manning, Executive Director  
Mark C. Cooper, M.D., Medical Director  
Jean M. Greenwood, Administrative Assistant  
Dan Sprague, Assistant Executive Director  
Tim Terranova, Consumer Assistant  
Maria MacDonald, Board Investigator

**ATTORNEY GENERAL'S OFFICE**

Dennis Smith, Assistant Attorney General

Dr. Gleaton was excused

Mr. Dyer was excused at 2:30 p.m.

Detective James Gioia

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The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S. § 1711-C). The Board moved, seconded, and voted the following executive session times. During the public session portions of the meeting actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

**PUBLIC SESSIONS**

9:05 a.m. – 9:18 a.m.  
10:11 a.m. – 10:26 a.m.  
11:38 a.m. – 12:41 p.m.  
12:41 p.m. - 12:58 p.m.  
12:58 p.m. – 1:03 p.m.  
2:34 p.m. - 2:35 p.m.  
2:41 p.m. – 2:57 p.m.  
2:57 p.m. – 4:10 p.m.

**PURPOSE**

Call to Order  
Recess  
Noon Meal  
Public Session  
Public Session  
Public Session  
Recess  
Public Session

**EXECUTIVE SESSION**

9:18 a.m. -10:11 a.m.	Reviewing Complaints
10:26 a.m. – 11:38 a.m.	Reviewing Complaints and Assessment and Direction
1:03 p.m. – 2:34 p.m.	Informal Conference
2:35 p.m. - 2:41 p.m.	Informal Conference

**I. Call to Order - Dr. Hatfield**

Dr. Hatfield called the meeting to order.

**A. Amendments to Agenda**

1. AD 12-107 Consent Agreement for Approval
2. Secretary's Report, List B Sebastien Duclos, P.A.-C
- B. Scheduled Agenda Items
  - 9:00 a.m. Board Order Cesar O. Garcia, M.D.
  - 1:00 p.m. Informal Conference CR11-479/12-22
  - 3:00 p.m. Monitoring Request to Amend from Paul Tessier, M.D.

## II. Complaints

### 1. Review Draft Letters of Guidance

#### a. CR 12-52 Donald G. Blagdon, M.D.

Dr. Jones moved to accept the letter of guidance to Dr. Blagdon. Dr. Nyberg seconded the motion, which passed unanimously.

#### b. CR 12-55 Gilbert Wilcox, M.D.

Ms. Clukey moved to accept the letter of guidance to Dr. Wilcox. Dr. Jones seconded the motion, which passed 7-0-0-1 with Dr. Andrews recused.

#### c. CR 12-75 Ratul Raychaudhuri, M.D.

Dr. Jones moved to accept the letter of guidance to Dr. Raychaudhuri. Dr. Nyberg seconded the motion, which passed unanimously.

#### d. CR 12-77 Douglas G. Couper, M.D.

Dr. Jones moved to accept the letter of guidance to Dr. Couper. Dr. Dumont seconded the motion, which passed 7-0-0-1 with Dr. Andrews recused.

### 2. CR 12-89

Dr. Barnhart moved to dismiss CR 12-89. Dr. Dumont seconded the motion, which passed 7-0-0-1 with Dr. Andrews recused.

The complainant feels the physician greeted him rudely at their only appointment, leading to subsequent extreme anxiety and emotional difficulties after the visit. A review of records shows appropriate clinical care. It is impossible for the Board to know whether the doctor followed his usual greeting procedures with this patient. The patient notes a tendency to obsess over situations and is extremely particular about what is said to him. The physician apologizes for having upset him, and in fact contacted the patient by phone to apologize.

### 3. CR 12-145

Ms. Clukey moved to dismiss CR 12-145. Dr. Jones seconded the motion, which passed 7-0-0-1 with Dr. Andrews recused.

The patient complains his physician did not have appropriate coverage when he needed post-surgery attention. The patient had an operation on his varicose veins and was attended to satisfactorily by the physician. The physician's practice does not have weekend hours, during which time the patient developed an infection. When he called the practice, the message machine instructed him to go to the Emergency Department (ED) for worsening conditions. He had a scheduled appointment the following Monday, when the office took a picture of the area of infection and sent it digitally to the physician who was on vacation. The physician recommended he go to the ED. The ED's on call surgeon attended to the patient's infection. Subsequently, to improve patient satisfaction and communication, the physician instituted a 24-hour pager system for after hour calls. On weekends calls will go to mid-level providers in his practice when he himself is not on call. When necessary, the patient's call will be forwarded to the on call physician at a cooperating practice.

4. CR 12-88

Dr. Dumont moved to investigate further CR 12-88. Dr. Jones seconded the motion, which passed unanimously.

5. CR 12-50

Dr. Dumont moved to continue to investigate further CR 12-50 and to deny the physician's request to remove the restriction which prevents him from prescribing suboxone to new patients. Dr. Jones seconded the motion, which passed unanimously.

6. CR 12-84

Ms. Clukey moved to dismiss CR 12-84. Dr. Jones seconded the motion, which passed unanimously.

The patient alleges that the physician engaged in unprofessional conduct based upon the physician's decision not to issue a prescription refill for narcotics 10 days early. The physician explained his rationale for not filling the narcotic prescription early, including the fact that: (1) he was the covering physician; (2) there was no written pain contract on file (despite the patient's claim that there was); (3) the patient had a history of requesting early refills or new narcotic prescriptions because his medications were lost or destroyed; (4) the patient failed to advise his PCP of his impending vacation; and (5) the patient had a history of substance abuse. A review of the medical records fully corroborates the physician's decision not to fill the narcotic prescription early.

7. CR 12-109

Dr. Barnhart moved to dismiss CR 12-109. Dr. Nyberg seconded the motion, which passed unanimously.

The patient complains that the physician threatened her and illegally detained her in the hospital. The physician explains that the patient needed emergency care and posed a threat of harm to others. She also explains that she informed the patient that she is required to report the findings of her evaluation to DHHS, which possibly could have sounded like a threat due to the patient's condition, but no threat was intended.

8. CR 12-111

Dr. Barnhart moved to dismiss CR 12-111. Dr. Nyberg seconded the motion, which passed 7-0-0-1 with Dr. Dumont recused.

The complainant has asked to withdraw this complaint as it was filed in error. The named physician was not involved in the questionable event and there are no medical records for the Board to review.

9. CR 12-110

Dr. Barnhart moved to dismiss CR 12-110. Dr. Nyberg seconded the motion, which passed unanimously.

The patient complains that she was detained illegally and hospitalized without her consent. The physician explains that she was called to perform a second evaluation of the patient and, if she found it to be necessary, authorize continuation of the patient's emergency involuntary hospitalization. In the physician's opinion, her evaluation justified such authorization, which was provided.

9a. CR 12-200

Dr. Barnhart moved to issue a complaint in this case CR 12-200. Dr. Jones seconded the motion, which passed unanimously.

10. CR 12-115

Dr. Andrews moved to investigate further CR 12-115. Mr. Dyer seconded the motion, which passed unanimously.

11. CR 12-121

Dr. Jones moved to dismiss CR 12-121. Mr. Dyer seconded the motion, which passed 7-0-0-1 with Dr. Andrews recused.

In this case, the patient complains the physician did not perform his surgery appropriately necessitating a second procedure to solve the problem. He also complains the physician was condescending and arrogant and would not listen to his questions and concerns both before and after the surgery. The physician responds by explaining his care of the patient and the rationale for the surgery performed. The second surgeon submitted a letter stating that while the

additional surgery was necessary it was not because the original surgery had been performed negligently. The physician denies his interactions and discussions with the patient were unprofessional. It is impossible for the Board to know what the nature of the patient-physician interactions was like.

12. CR 12-34

Dr. Barnhart moved to hold an Informal Conference in the matter of CR 12-34. Dr. Dumont seconded the motion, which passed 7-0-0-1 with Dr. Jones recused.

13. CR 12-91

Dr. Dumont moved to dismiss CR 12-91. Dr. Jones seconded the motion, which passed unanimously.

The complainant feels her medical care was inappropriate, but did not sign a release to allow the Board to review her medical records. Without these records, the Board cannot investigate or make any judgment on her complaint.

14. CR 12-114

Dr. Andrews moved to hold an Informal Conference in the matter of CR 12-114. Dr. Jones seconded the motion, which passed unanimously.

15. CR 12-139

Dr. Andrews moved to dismiss CR 12-139. Dr. Nyberg seconded the motion, which passed unanimously.

The complainant alleges the primary care physician provided inappropriate care of her former husband's chronic pain, substance abuse, and chronic medical condition, as well as refusing to make timely specialty referrals, resulting in complications due to addiction and eventually the dissolution of their family unit. The respondent states that diligent care of an unfortunate condition was provided for many years, and that multiple specialty referrals were made in his attempts to manage the patient's problems. Record review reveals attentive care with referrals for consultation and management to a variety of specialists appropriate to the patient's problems. Universal precautions in opioid management were performed and documented, in some cases, over the objections of the complainant.

16. CR 12-140

Mr. Dyer moved to dismiss CR 12-140. Dr. Jones seconded the motion, which passed unanimously.

The patient complains the physician has refused to operate on him. The patient admits he cancelled the surgery twice and explains his reasons. He states it is difficult to find another option and feels abandoned. The physician explains his care and outlines steps he and his office have taken to assist the patient. Following the second cancellation, the physician states he was concerned about the patient's compliance with post-operative care and therapy and concluded the patient would not be a good surgical candidate. He supplied the patient with the names of several other surgeons.

17. CR 12-143

Mr. Dyer moved to investigate further CR 12-143. Dr. Andrews seconded the motion, which passed unanimously.

18. CR 12-144

Ms. Clukey moved to investigate further CR 12-144. Dr. Jones seconded the motion, which passed 7-0-0-1 with Dr. Andrews recused.

19. CR 11-511/12-24

Dr. Nyberg moved to deny the physician's request to alter the Consent Agreement. Dr. Andrews seconded the motion, which passed 7-0-1-0 with Dr. Barnhart abstaining.

20. CR 11-511/12-24

Mr. Clukey moved to order a 3286 in the matter of CR 11-511/12-24. Mr. Dyer seconded the motion, which passed 7-0-1-0 with Dr. Barnhart abstaining.

III. Assessment & Direction

21. AD 12-128 (CR 12-201).

Dr. Jones moved to issue a complaint in the matter of AD 12-128 (CR 12-201). Dr. Nyberg seconded the motion, which passed unanimously.

22. AD 12-149 (CR 12-202)

Ms. Clukey moved to issue a complaint in the matter of AD 12-149 (CR 12-202). Dr. Jones seconded the motion, which passed unanimously.

23. AD 12-158 (CR12-203)

Dr. Andrews moved to issue a complaint in the matter of AD 12-158 (CR12-203). Dr. Jones seconded the motion, which passed 7-0-0-1 with Dr. Barnhart recused.

24. AD 12-187 (CR12-204)



Dr. Jones moved to issue a complaint in the matter of AD 12-187 (CR12-204). Mr. Dyer seconded the motion, which passed 7-0-0-1 with Dr. Dumont recused.

- 25. Intentionally Left Blank
- 26. Intentionally Left Blank
- 27. Complaint Status Report (FYI)
- 28. Consumer Assistant Feedback (FYI)
- 29. Physician Feedback (FYI)

#### IV. Informal Conference 1:00 P.M.

##### A. CR 11-479/12-22 Catherine A Lockwood, M.D.

Dr. Jones moved to order an Adjudicatory Hearing in the matters of CR 11-479/12-22 Catherine A Lockwood, M.D. and empower Assistant Attorney Smith to seek a Consent Agreement concerning prescribing restrictions for controlled substances for no more than ten days. Dr. Andrews seconded the motion, which passed unanimously.

#### V. Minutes of September 11, 2012

Dr. Jones moved to approve the minutes of September 11, 2012. Dr. Dumont seconded the motion, which passed unanimously.

#### VI. Board Orders & Consent Agreement Monitoring & Approval

##### A. Board Orders

- 1. Cesar O. Garcia, M.D. CR 10-476 [See Appendix A Attached]

Dr. Jones moved to accept the Board Order in the matter of Cesar O. Garcia, M.D. CR 10-476. Mr. Dyer seconded the motion, which passed unanimously.

##### B. Consent Agreement Monitoring and Approval

- 1. Monitoring Compliance Report (FYI)
- 2. Andrew Fletcher, M.D.

Dr. Fletcher entered a second Consent Agreement for Conditional Licensure with the Board on January 8, 2008, following a license suspension in June 2007 after his urine test with the PHP was positive for cocaine.

Board staff received a request from Dr. Fletcher asking the Board to modify his Consent Agreement so that his sole requirement would be that he continue as a compliant participant in the MMPHP until such time the Board deems it appropriate that he graduate.

Dr. Fletcher's request was reviewed at the July and September Board meetings. After review, the Board voted to table this issue until they could obtain additional information from the Office of the Attorney General. The Board reviewed a proposed amendment to his Consent Agreement.

Dr. Nyberg moved to approve the proposed amendment to the Consent Agreement in the matter of Andrew Fletcher, M.D. Dr. Andrews seconded the motion, which passed 6-0-0-2 with Dr. Jones and Dr. Dumont recused.

3. Linda Kenniston, M.D.

Dr. Keniston entered a Consent Agreement with the Board on April 30, 2010, after learning Dr. Keniston had been charged with OUI following an accident on March 7, 2009, when she damaged a front porch of a home in Fairfield, Maine.

Board staff received a request from Dr. Keniston asking the Board to modify her Consent Agreement so that his sole requirement would be that she continues as a compliant participant in the MMPHP until such time the Board deems it appropriate that she graduate.

Dr. Keniston's request was reviewed by the Board at the September 2012 meeting. At that time, the Board voted to table the issue until they could review further information from the Office of the Attorney General.

The Board reviewed a proposed amendment to her Consent Agreement.

Dr. Jones moved to approve the proposed amendment to Dr. Kenniston's Consent Agreement. Dr. Dumont seconded the motion, which passed unanimously.

4. Joshua Werblin, M.D. (FYI)

5. James Iannazzi, M.D.

Dr. Iannazzi entered a Consent Agreement with the Board on September 11, 2012, after Dr. Iannazzi admitted to having a sexual relationship with a patient.

Dr. Iannazzi attended a course in May 2012 at Vanderbilt University titled "Maintaining Proper Boundaries" and is asking the Board approve this course to satisfy his course requirement.

Dr. Dumont moved to accept the course titled "Maintaining Proper Boundaries" submitted by Dr. Iannazzi for approval. Dr. Jones seconded the motion, which passed unanimously.

6. Paul Tessier, M.D.

Dr. Tessier entered a Consent Agreement for discipline and restricted/conditional licensure with the Board on September 14, 2010, after learning Dr. Tessier had been practicing with an inactive license by conducting aviation medical exams for the US Department of Federal Aviation (F.A.A.).

Dr. Tessier's Consent Agreement limits Dr. Tessier's practice of medicine to acting as an aviation medical examiner, conducting aviation medical examinations for the F.A.A. and Transport Canada, performing physicals for the Coast Guard, department of Transportation, or life insurance companies. The Consent Agreement also states that Dr. Tessier shall not apply to the Board for a full and unrestricted "active" medical license in light of his lack of active medical practice since 1999.

Board staff has received a request from Dr. Tessier asking the Board to make changes to his agreement that would allow him to practice at Togus V.A.

Dr. Dumont moved to deny Dr. Tessier's request to modify his Consent Agreement to allow active practice. Dr. Nyberg seconded the motion, which passed 6-0-1-0 with Dr. Barnhart abstaining.

7. James Frede, M.D. [See Appendix B Attached]

Dr. Jones moved to accept a Consent Agreement in which Dr. Frede agrees to a voluntary surrender of his license based on inappropriate prescribing practices. Dr. Dumont seconded the motion, which passed unanimously.

VII. Adjudicatory Hearing(s) (None)

VIII. Remarks of Chairman

A. MaineCare regulations on narcotic prescriptions (FYI)

IX. Executive Director's Monthly Report

The Board accepted the report of the Executive Director.

A. Complaint Status Report (FYI)

B. Policy Review "Processing License Apps Begins Upon Receipt"

Dr. Nyberg moved to reaffirm the policy titled "Processing License Apps Begins Upon Receipt." Dr. Barnhart seconded the motion, which passed unanimously.

C. Board Education PowerPoint Presentation (FYI)

X. Medical Director's Report

## A. Mainecare Opioid Workgroup

Dr. Cooper reviewed the current MaineCare Opioid policies which are being developed.

XI. Remarks of Assistant Attorney General (None)

XII Secretary's Report

## A. List A

## 1. M.D. List A Licenses for Ratification

Dr. Dumont moved to ratify the physicians on M.D. List A below for licensure. Ms. Clukey seconded the motion, which passed unanimously.

The following license applications have been approved by staff and Board Secretary Maroulla Gleaton, M.D. without reservation:

NAME	SPECIALTY	LOCATION
Adesanya, Ismail O.	Family Medicine	Caribou
Angeles, Erik M.	Emergency Medicine	Not List
Baraona, Francisco J.	Internal Medicine	Portland
Blanch, Robert M.	Diagnostic Radiology	Not Listed
Brackin, Phillip	Diagnostic Radiology	Not Listed
Bruno, Roderick J.	Orthopedic Surgery	York
Chinn, Douglas O.	Urology	Brunswick
Chu, Etem T.	OB/GYN	Caribou
Cirigliano, Michael D.	Internal Medicine	Not Listed
Cogen, Mark A.	Anesthesiology	Bangor
Cronin, Jonathan H.	Pediatrics	Telemedicine
Druff, Gerald H.	Ob/Gyn	Damariscotta
Faulk, Linda S.	Internal Medicine	Not Listed
Hassan, Ghinwa Al	Family Medicine	Bangor
Hecker, Susan M.	Thoracic Surgery	Bangor
Jain, Akshat	Pediatrics	Not Listed
Joyce, Ryan R.	Anesthesiology	Not Listed
Jubulis, Jennifer K.	Pediatrics	Portland
Khoury, Lisa D.	Orthopedic Surgery	Brunswick
Kinbrook, Michelle	Internal Medicine	Bar Harbor
King, Bethany J.	Otolaryngology	Lewiston
Knoblock, Ronald J.	Hematology	Not Listed
LaChance, Chadi L.	Internal Medicine	Brunswick
Lema-Gutierrez, Sergio	Internal Medicine	Presque Isle
Levine, Justin J.	Diagnostic Radiology	Bangor
Levine, Justin J.	Diagnostic Radiology	Bangor

Lukose, Biju M.	Surgery	Presque Isle
Maduako, John N.	Family Practice	Augusta
Mendlick, Matthew R.	Diagnostic Radiology	Telemedicine
Noll, Bradford W.	Family Medicine	Princeton
Olteanu, Floring	Internal Medicine	Portland
Parker, Daryl R.	Diagnostic Radiology	Skowhegan
Raev, Alexandar I.	Psychiatry	Augusta
Rao, Sneha Harish	Anesthesiology	Skowhegan
Reccoppa, Lawrence	Psychiatry	Windham
Ribeiro, Marcelo L.	Internal Medicine	Bangor
Rowland, Timothy M.	Diagnostic Radiology	Telemedicine
Saurborn, Daniel P.	Diagnostic Radiology	Telemedicine
Schlager, Robert	Family Practice	Pittsfield
Schuyler III., Walter B.	Anesthesiology	Not Listed
Starling, Cheryl E.	Pathology	Telemedicine
Stone, Alan B.	Diagnostic Radiology	Telemedicine
Thomas, Christian A.	Hematology/Oncology	Scarborough
Thomas, Randolph S.	Pediatrics	Portland
Vaughn, Traci L.	Otolaryngology	Augusta
Veld, Miriam Y.	Family Medicine	Augusta
Wagner, Traci L.	Pediatrics	Portland
Weigel, Tracey L.	Thoracic Surgery	Portland
Yee, Martin C.	Internal Medicine	Not Listed

## 2. P.A. List A Licenses for Ratification

Dr. Jones moved to ratify the physician assistants on PA List A below for licensure. Ms. Clukey seconded the motion, which passed unanimously.

The following Physician Assistant license applications have been approved by the Board Secretary Maroulla Gleaton, M.D. without reservations:

NAME	LICENSE	PSP	LOCATION
Alexandra Ainsworth, P.A.-C	Active	William Breen, M.D.	Bangor
Angela Bacchiocchi, P.A.-C	Active	James Turner, M.D.	Bangor
Callie Harmon, P.A.-C	Inactive	None	None
Anna Honsinger, P.A.-C	Active	F. Parke Oldenburg, M.D.	Bangor
Charity Lower, P.A.-C	Inactive	None	None
Kelly McCosh, P.A.-C	Active	Neil Duvual, M.D.	Lewiston
Catherine McInnis, P.A.-C	Active	John Dickens, Jr., M.D.	Lewiston
Kim Pederson, P.A.-C	Inactive	None	None
Caitlin Phelps, P.A.-C	Inactive	None	None

## B. List B Applications for Individual Consideration

### 1. Sebastien Duclos, P.A.-C

The Licensure Committee moved to grant a full license to Sebastien Duclos, P.A.-C. The motion passed unanimously.

C. List C Applications for Reinstatement (None)

D. List D Withdrawals

1. List D (1) Withdraw License Application (None)

2. List D (2) Withdraw License from Registration

Dr. Jones moved to approve the physicians on List D (2) to withdraw their licenses from registration. Ms. Clukey seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration.

<u>NAME</u>	<u>LICENSE NUMBER</u>
Baill, Kevin E.	016936
Carlson, Carl W.	014331
Curran, Jean F.	011967
Reid, Kristine M.	015150
Schaffner-Skau, Melinda K	017022
Zacher, Allan N.	015858

3. List D (3) Withdraw License from Registration - Individual Consideration (None)

E. List E Licenses to Lapse by operation of law (FYI)

The following physician and physician assistant licenses lapsed by operation of law effective September 13, 2012.

<u>NAME</u>	<u>LICENSE NO.</u>
Little, Patricia	MD18333
Maurin III, Edward	MD15477
Miller, Elliott	MD7642
Mistretta Jr., Anthony	MD17143
Passalaris, Tina	MD17927
Petrea, Ion	MD7974
Riley, Gayle	MD17750
Rogosin, Shahna	MD16607
Runge, Paul	MD13049
Scharf, Lawrence	MD16939
Shah, Himani	MD18591
Stewart, John	MD8977
Taylor, William	MD4529
Tehranirad, Mohammad	MD18012

Tzvetanov, Tzvetan  
Wellinger, John

MD15274  
MD11270

Dr. Jones moved to discontinue checking the Social Security Administration Death Index before allowing a license to lapse. Dr. Andrews seconded the motion, which passed unanimously.

List F Licensees requesting to convert to active status (None)

G. List G Renewal applications for review (None)

H. List H. Physician Assistant Schedule II Authority Requests for Ratification

1. Applications to Renew Schedule II Authority

2. Applications for New Schedule II Authority

Dr. Jones moved to ratify the physician assistants on List H (2) for new Schedule II Authority. Ms. Clukey seconded the motion, which passed unanimously.

The following new requests for Schedule II prescribing authority have been approved by the Board Secretary Maroulla Gleaton, M.D.

NAME	PSP	LOCATION
Jennifer Arich, P.A.-C	Brad Cushing, M.D.	Portland, ME
Frank A. Hull, P.A.-C	Lee Thibodeau, M.D.	Portland, ME
Rebecca White, P.A.-C	Brad Cushing, M.D.	Portland, ME
Heather Lawler, P.A.-C	Brad Cushing, M. D.	Portland, ME
Brian Cole, P.A.-C	Brad Cushing, M.D.	Portland, ME
Erica Rice, P.A.-C	Brad Cushing, M.D.	Portland, ME
Richard Wiemer, P.A.-C	Scott Kemmerer, M.D.	Waterville, ME
Sarah Lavoie, P.A.-C	Brian McGrory, M.D.	Falmouth, ME
Melissa Walters, P.A.-C	Andrew Hertler, M.D.	Augusta, ME
Michael Schwarz, P.A.-C	Brandon Stahl, M.D.	York, ME
Eric Smith, P.A.-C	Adam Rana, M.D.	Falmouth, ME
Julia Barrett, P.A.-C	James Fine, M.D.	Wiscasset, ME
Teri Schrock, P.A.-C	Torah Tomasi, M.D.	Lewiston, ME
Amelia Knowles, P.A.-C	William Hodge, M.D.	Bangor, ME

### XIII. Standing Committee Reports

#### A. Public Information Committee

Ms. Clukey reported the newsletter is ready for publication and should go out in early November.

- XIV. Board Correspondence (FYI)
- XV. (FYI)
- XVI. FSMB Material (None)
- XVII. Other Business (None)
- XVIII. Adjournment 4:15 P.m.

Ms. Clukey moved to adjourn. Dr. Andrews seconded the motion, which passed unanimously.

Respectfully submitted,

Jean M. Greenwood  
Administrative Assistant



**MAINE STATE BOARD OF LICENSURE IN MEDICINE**

IN RE: Cesar Garcia, M.D. ) **FINAL**  
Licensure Disciplinary Action/Renewal ) **DECISION AND ORDER**  
Complaint No. CR10-476 )

**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. Sec. 3282-A, *et seq.*, 5 M.R.S. Sec. 9051, *et seq.* and 10 M.R.S. Sec. 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine at 1:00 p.m. on April 10, 2012 and at 1:00 p.m. on September 11, 2012. The purpose of the meeting was to conduct a consolidated adjudicatory hearing to decide the following three issues. First, whether Cesar Garcia, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing which would subject him to disciplinary sanctions. Second, whether the Board would grant Dr. Garcia's request for renewal of his license to practice medicine in this state.<sup>1</sup> Third, whether the Board intended certain language in the November 14, 2006 Consent Agreement to place a restriction on Dr. Garcia's license to practice medicine.<sup>2</sup>

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Gary R. Hatfield, M.D., public member, David Nyberg, Ph.D., public member, Cheryl Clukey, Maroulla S. Gleaton, M.D., David H. Dumont, M.D., David D. Jones, M.D., Louisa Barnhart, M.D., public member Dana D. Dyer, and David R. Andrews, M.D. Dr. Garcia appeared but was not represented by an attorney. Dennis Smith, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The Board then took administrative notice of its statutes and Rules. State's exhibits 1-40 and Respondent's exhibits 1-5 were admitted into the Record. Subsequent to the parties' opening statements, the taking of testimony, exhibits, and closing

<sup>1</sup> The State filed a Motion to Consolidate which was granted without objection at the hearing.

<sup>2</sup> The parties agreed at the September 11, 2012 session to submit this issue for the Board's consideration.

arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence.

## II.

### FINDINGS OF FACT

1. Dr. Cesar Garcia, 52 years of age, has held a license to practice medicine in the State of Maine since September 21, 1999. Dr. Garcia specializes in Emergency Medicine.
2. On November 14, 2006, Dr. Garcia entered into a Consent Agreement with the Board and Department of the Attorney General regarding Complaint CR04-120, which involved a lumbar puncture procedure performed by Dr. Garcia at Maine General Medical Center, Thayer Campus, in Waterville, Maine. In that Consent Agreement, Dr. Garcia admitted that the Board had sufficient evidence from which it could reasonably conclude that he: (a) was responsible for normal saline arriving at the laboratory instead of CSF (cerebral spinal fluid); (b) was responsible for miscommunications with the physicians who followed up with this incident; (c) was responsible for failing to create a procedure note for the lumbar puncture; and (d) was responsible for the techniques he employed in performing the lumbar puncture.

The above incident also resulted in the conclusion of Thayer's medical director that he and the medical director of the emergency room could no longer trust Dr. Garcia since he changed his story several times regarding his handling of the subject cerebral spinal fluid specimen. The lack of trust resulted in the termination of Dr. Garcia's employment at Thayer.

3. Dr. Garcia admitted that the above conduct fell below the standard of care and constituted unprofessional conduct and grounds for discipline of his Maine license pursuant to 32 M.R.S. § 3282-A(2)(F). As discipline for that conduct, Dr. Garcia accepted a reprimand and agreed to follow the guidelines for the standard resident work hours so that he did not become excessively fatigued, which the Board concluded was the cause of Dr. Garcia's conduct.
4. On or about September 20, 2010, the Board received information from Bayne-Jones Army Community Hospital (BJACH) in Fort Polk, Louisiana, that it had removed Dr. Garcia from providing services in the Emergency Department on September 13, 2010, as a result of his presenting to work with obvious signs of intoxication. According to this same information, Dr. Garcia had been previously counseled about the use of alcohol in July 2010.

5. On September 20, 2010, Mark Cooper, M.D., Medical Director for the Board, spoke with Dr. Garcia by telephone. According to Dr. Cooper, Dr. Garcia did not dispute the information received from BJACH. Dr. Garcia stated that the past years have been increasingly stressful both mentally and financially. According to Dr. Garcia, as a result of the prior consent agreement with the Maine Board, he was unable to be licensed in Arizona, his home state, and has only been able to obtain work at various governmental facilities around the country while working under his Maine license. According to Dr. Garcia, the constant traveling and lack of a steady paycheck have created a great deal of stress for him and his family.

6. Dr. Garcia explained during the September 20, 2010 telephone conversation with Dr. Cooper that on July 20, 2010, he had driven straight from Arizona to Fort Polk, Louisiana to make his scheduled shift at the BJACH emergency room. He only had a few hours after arriving before he was to report for work. He subsequently went to work in the BJACH emergency room and shortly thereafter passed out. A blood sample was drawn which allegedly revealed benzodiazepine medication (prescribed sleep aid) and alcohol. Dr. Garcia stated that his syncopal episode was due to his serum creatinine being 1.7 when his blood was tested and that he was extremely dehydrated from the drive.

7. Dr. Garcia, during the above phone call, also discussed with Dr. Cooper another episode which occurred on September 13, 2010. Dr. Garcia stated that he went out in the morning to unwind with some of the ER staff after a night shift. Dr. Garcia admitted consuming alcohol. Dr. Garcia went home to sleep and returned to work at the ER for the night shift when he was confronted about being intoxicated. According to Dr. Garcia, he requested a breath or blood test at that time, but his request was refused. Instead, he was advised to seek counseling. Dr. Garcia told Dr. Cooper that shortly thereafter he enrolled in the Maricopa County detoxification program. Dr. Cooper discussed the Arizona Physician Health Program and informed Dr. Garcia how to contact them.

8. On September 23, 2010, Dr. Garcia spoke again with Dr. Cooper by telephone. Dr. Garcia informed Dr. Cooper that the Arizona Physician Health Program referred him to the Sundance Center for an intake evaluation which occurred later that day. On September 28, 2010, Dr. Cooper received a letter from the Sundance Center that confirmed Dr. Garcia's enrollment and participation.

9. On November 5, 2010, the Board received a letter from Dr. Garcia dated October 12, 2010 which contained a different account of his activities during September 13, 2010. According to Dr. Garcia, on that day, he finished his second night shift at BJACH in the early morning. After work, Dr. Garcia went to Wal-Mart and bought a flask of whiskey, which he brought back to his hotel room. There, he drank "two small cups of Coca-Cola, mixed with ice, and whisky, and watched television before going to sleep." At approximately 2:30 p.m., Dr. Garcia awoke and "took another drink to go back to sleep." Dr. Garcia later woke up and went to the ER for his shift at 6:00 p.m. According to Dr. Garcia, the department head, who had been "cued" by another physician, asked Dr. Garcia if he had been drinking. According to Dr. Garcia, he "explained the timing and quantity of the drinks conveying... that [he] did not have any intention of coming to work with an alcohol level." According to Dr. Garcia, the department head told him to take a few hours off and denied his requests to test his blood-alcohol level.

10. In his letter dated October 12, 2010, Dr. Garcia confirmed BJACH's report that he fainted in the ER on July 20, 2010 and was tested as having a "creatinine level of 2.0 [and] an alcohol level of 0.02, and urine positive for benzodiazepines." When confronted by the hospital staff, Dr. Garcia "confirmed that the benzodiazepines were prescription, and that the drink had been before going to sleep for [his] shift." According to Dr. Garcia, the "concern that [he] had drank alcohol purposefully before work was allayed and my renal failure explained how [he] had a prolonged trace alcohol level, [so] they decided to give [him] another chance." Dr. Garcia admitted that he "began to drink alcohol on flights to work and in [his] hotel after work to decompress from stress over the last one-half year's period."

11. Dr. Garcia also in the above correspondence described the steps that he had taken to address his use of alcohol after being terminated from BJACH. The actions included total abstinence, attending a substance abuse addiction program, treating with an addiction psychologist, and addressing his anxiety. Dr. Garcia described the stressors in his life that he believed led to his use of alcohol. He also fully recognized that his actions were not appropriate and accepted responsibility for what transpired.

12. On October 12, 2010, the Board reviewed the information provided by BJACH and Dr. Garcia, and, pursuant to 32 M.R.S. § 3282-A, voted to initiate a complaint against Dr. Garcia's Maine medical license alleging unprofessional conduct and habitual substance abuse that was

foreseeably likely to result in Dr. Garcia performing services in a manner that endangered the health or safety of patients. The Board docketed the complaint as CR10-476.

13. On or about December 1, 2010, the Board received a response from Dr. Garcia to complaint CR10-476. In his response, Dr. Garcia indicated that he had completed the intensive outpatient program at the Sundance Center, and had received substance abuse supplementary services at the Community Bridges Outpatient program. In addition, Dr. Garcia indicated that he was undergoing monitoring for alcohol consumption, and was abstinent from alcohol. According to the November 30, 2010 Community Bridges Outpatient treatment team notes, Dr. Garcia was making progress, but had not as yet achieved the goals articulated in his individualized treatment plan.

14. Dr. Garcia, in his December 1, 2010 response, again attributed his positive alcohol test at BJACH in July 2010 as a "primary medical problem, like any other organ failure... [and that] trace alcohol was detected because of [his] renal failure."

15. The above letter also contained Dr. Garcia's third different rendition of the September 13, 2010 incident at BJACH. Dr. Garcia disclosed to the Board for the first time that he "complained of feeling drugged by Benadryl and feeling anticholinergic symptoms of dry mouth and slurring speech and dizziness" during the event. According to Dr. Garcia, before work on September 13, 2010, he had taken his "first dose of a sample of Seroquel that was a much higher milligram dosage with new extended-release activity." Dr. Garcia asserted that the "side effects of a sudden escalation of a Seroquel dose would lead to the anticholinergic complaints [he] had." He wrote that "when I arrived at work and was asked if I was drunk, I knew that I was not, and said I wasn't."

This was the first time that Dr. Garcia disclosed to the Board or its agents that he was being prescribed Seroquel at the time of this incident. Significantly, there were possible synergistic effects that Seroquel and benzodiazepines could have produced with the alcohol consumed by Dr. Garcia before reporting to work at BJACH.<sup>3</sup> Dr. Garcia did not address this issue in his response.

16. Dr. Garcia's supervising physician, Dr. Troy Prairie, Chief Primary Care Dept., countered Dr. Garcia's recollection of his condition on September 13, 2010. He recalled that Dr. Garcia had presented to work "with obvious signs of intoxication," which was confirmed by two physicians and a military police officer. He was removed from service and advised to get help with his

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<sup>3</sup> The pharmaceutical warnings regarding Seroquel XR include the ingestion of alcohol which may make one or more of the side effects worse-e.g. "... movements you cannot control in your face, tongue, or other body parts."

addiction. On the positive side, Dr. Prairie noted that "Dr. Garcia's performance as a physician in the BJACH emergency room was, at times, outstanding."

17. On or about December 13, 2010, the Board received Dr. Jon Solberg's letter regarding Dr. Garcia. Dr. Solberg, Chief of Emergency Medicine at BJACH, revealed information relevant to the allegations that Dr. Garcia had engaged in habitual substance abuse on July 20 and September 13, 2010. This correspondence was supplemented by an e-mail from Dr. Solberg to Dr. Garcia dated April 5, 2012 in which the former addressed his recollections of the events of September 13, 2010. He wrote: "I do not remember all the events of the night your employment was terminated. I do remember that you appeared under the influence of something and were not your normal and articulate self, as your speech was markedly slurred and you appeared pale...I do remember you saying that you had taken some medication, that your mouth felt extremely dry, and that you suspected this was the cause of your symptoms. I do not remember what specific medication we discussed as there were no confirmatory studies done...."<sup>4</sup>

18. Dr. Solberg additionally described Dr. Garcia as an "efficient and clinically sound physician. He consistently displayed good interpersonal skills with patients and was known by staff as a pleasant and even enjoyable physician to work with." Dr. Solberg further commented in his April 5, 2012 email that "...I remain confident that you are an excellent physician, one whom I'd entrust my own family to..." These positive comments were also consistent with those made by several of Dr. Garcia's former peers at Thayer Hospital, Waterville, Maine before his termination at that facility.

19. Dr. Mark Cooper, M.D. expressed his opinions at the April 10, 2012 session that Dr. Garcia's actions on July 20, 2010 and September 13, 2010 were unprofessional and demonstrated evidence of habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients. At the very least, Dr. Garcia's alcohol and substance abuse and lack of awareness that he is impaired while functioning as a physician in a hospital setting supports Dr. Cooper's opinions regarding Dr. Garcia's medical practices.

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<sup>4</sup> Dr. Garcia was of the opinion that Dr. Solberg's April 5, 2012 email fully supported his explanation that he was under the influence of Seroquel and not alcohol. However, the Board took note that 3 individuals detected the odor of alcohol emanating from Dr. Garcia at the hospital on September 13, 2010 and that Dr. Solberg noticed "markedly slurred speech..."

20. The Board, taking the above facts and opinions detailed in paragraphs 1-19 into consideration, and based on the recited evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee's demeanor, concluded by the vote of 9-0 on April 10, 2012, that Cesar Garcia, M.D. violated the following statutory provisions.

1. Pursuant to 32 M.R.S. §3282-A.(2)(F), Dr. Garcia is considered to have engaged in unprofessional conduct since he violated a standard of professional behavior that has been established in the practice for which the licensee is licensed.

2. Pursuant to 32 M.R.S. §3282-A.(B), Dr. Garcia engaged in habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.

21. On April 10, 2012, the Board as the result of the above findings, voted 9-0 to issue an Interlocutory Decision and thereafter continue the matter pending Dr. Garcia's actions in accordance therewith. The Board conveyed to Dr. Garcia that its decision would provide him with the opportunity to comply with the following Board requirements which were necessary to be met for licensure renewal before the Board could be reassured that the public health and safety were not at risk. First, Dr. Garcia requires counseling to aid him to cope effectively with the many stressors, including those in his medical practice, which negatively affect his life. Second, Dr. Garcia requires professional assistance to help him deal with alcohol and substance abuse issues. Third, Dr. Garcia requires professional therapy to assist him to avoid his denial of problems such as alcohol and substance abuse and deflection of criticism rather than taking personal responsibility. Fourth, Dr. Garcia needs to have counseling regarding his lack of introspection and awareness that he may be impaired without realizing it.

22. The Board concluded that Dr. Garcia would be best served by removing himself temporarily from the stress of his practice and entering and completing an intensive residential treatment program to be preapproved by Board Chairman Dr. Gary Hatfield **followed by "intensive monitoring as ordered by the Maine Professional Health Program or similar organization."** (emphasis added)

23. The Board "reserved all rights regarding the decision whether to deny Dr. Garcia's application for licensure renewal and/or to order additional conditions and sanctions should Dr. Garcia fail to satisfactorily complete the above program in a timely manner."

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24. In compliance with the terms listed in the Interlocutory Decree, Dr. Garcia enrolled in The Decision Point Center, Prescott, Arizona on May 21, 2012. This licensed treatment facility provides long term extended care treatment for men and women 18 years old and older with substance and alcohol abuse and psychological issues.

25. On June 21, 2012, Dr. Garcia successfully completed the program's 30 day primary program.

However, it was noted that he "could have benefitted from an extended stay" but was "unwilling to do so due to finances. Prognosis would appear to be poor."

26. Subsequently, Dr. Garcia chose a lab and requested screenings for substances including opiates and alcohol. The screenings, performed on June 29, July 7, 16, and 24, 2012 and August 8 and 23, 2012 revealed negative results.

27. On July 6, 2012, Dr. Garcia forwarded a letter to the Board in which he listed the following future medical providers in accordance with the Board's Interlocutory Decree. Dr. Garcia wrote that:

A. Dr. Larry Waldman "has agreed to be my **treating psychiatrist**" beginning August 1, 2012. Dr. Garcia was examined by Dr. Waldman on August 10, 13, and 27, 2012. Dr. Waldman is not a psychiatrist but is a psychologist. **Dr. Garcia is no longer a patient of this practitioner.**

B. "Felice Goff, MS, LCSW will be my therapist. I have an initial appointment with her on August 1, 2012."

C. "Dr. David Greenberg has referred me for Caduceus support groups."

D. "My continuing drug testing is performed by the AZ Clinical Services Scottsdale. My results since discharge from the Decision Point Center are enclosed. **I have asked Dr. M. Palmer of Maine to supervise it...**"

E. **"Dr. Palmer of the Maine PHP has assisted me at every step of the process since September 2010. She is informed of my plan and agrees with it."** (emphases added)

28. Subpoenas requesting relevant records pertaining to Dr. Garcia's treatment were served on the above five subjects. The Maine PHP by its Director, Lani Graham, M.D., M.P.H, responded that Dr. Garcia "never shared any evaluation or treatment records with the program and never entered into a monitoring contract with the Program." Therefore, there were no documents to share with the Board. However, Margaret Palmer, Ph. D., Senior Clinical Associate at the Maine PHP,



responded on September 5, 2012 that “**Over a year ago, I did have a conversation with Dr. Garcia about what I thought he could do in Arizona to help himself...So, I guess one could say that I did help him, but it’s quite a stretch to state that I have worked with him every step of the way. I was not aware of his formalized plan...I have not approved of the treatment team there nor have I seen any urine drug screens for him.**” (emphasis added)

29. Social worker Goff was contacted on September 4, 2012 by a Board investigator. She did not recall Dr. Garcia and stated that she would remember if she saw a Mexican physician. Dr. Garcia testified that he had scheduled an appointment with her but that she must have misplaced documentation of that contact.

### III. CONCLUSIONS OF LAW AND SANCTIONS

10 M.R.S. §8008. “Purpose of occupational and professional regulatory boards. The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose.”

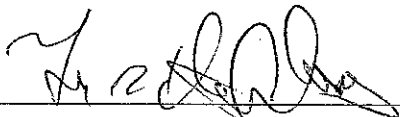
The Board, keeping in mind the above language, first deliberated the issue of whether it intended certain language in the November 14, 2006 Consent Agreement to place a restriction on Dr. Garcia’s license to practice medicine. The subject wording involved Dr. Garcia’s agreement to follow the guidelines for the standard resident work hours so that he did not become excessively fatigued. The Board determined by a unanimous vote of 9-0 that it had restricted Dr. Garcia’s hours worked, and therefore it was a restriction on his license.

The Board also unanimously voted 9-0 not to renew Dr. Garcia’s license to practice medicine in Maine. The Board reasoned, among other things, that Dr. Garcia was not trustworthy as demonstrated by his statements concerning the day to day involvement of the Maine PHP in his treatment program whereas the PHP had little or no contact with him. Similarly, Ms. Goff most likely had never heard of him, much less scheduled an appointment to counsel him. The continued threat of alcohol abuse for which Dr. Garcia has twice in the past 3 years received considerable in-patient treatment also supports the Board’s decision to deny renewal of his medical license.

Although Dr. Garcia requested further direction and focus from the Board, the Board determined that it had rendered enough guidance to him during the past 3 years and Dr. Garcia himself must learn to focus.

The third issue concerns whether sanctions other than non-renewal are appropriate in this matter. The Board did not entertain a motion to this effect so no additional sanctions were ordered.

Dated: October 9, 2012

  
\_\_\_\_\_  
Gary Hatfield, M.D., Chairman  
Maine Board of Licensure in Medicine

#### IV.

#### APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. Sec. 11001, 11002, and 10 M.R.S. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

In re:	)	CONSENT AGREEMENT FOR
James R. Frede, M.D.	)	VOLUNTARY SURRENDER OF
AD12-107	)	LICENSE

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice as a physician in the State of Maine held by James R. Frede, M.D. The parties to the Consent Agreement are: James R. Frede, M.D. ("Dr. Frede"), the State of Maine Board of Licensure in Medicine ("the Board"), and the State of Maine Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. At all times relevant to the complaint, Dr. Frede was a licensee of the Board. The Board first issued Dr. Frede a medical license on May 13, 2010. Dr. Frede specializes in Obstetrics and Gynecology.

2. On or about June 15, 2012, the Board received a "Board Action Disciplinary Alert Report" from the Federation of State Medical Boards (FSMB) that indicated that on May 14, 2012, the State of Illinois had indefinitely suspended Dr. Frede's medical license. As a result, the Board staff opened an investigation and docketed it as AD12-107.

3. On July 9, 2012, the Board received a copy of a "Consent Order" effective May 14, 2012, between Dr. Frede and the State of Illinois Department of Financial and Professional Regulation Division of Professional Regulation. In

the "Consent Order," Dr. Frede neither admitted nor denied that he had issued prescriptions for non-Controlled Substances for patients over the internet but acknowledged that should the matter proceed to hearing, the Illinois Medical Board could find that he engaged in such conduct in violation of the Medical Practice Act. The "Consent Order" resulted in the indefinite suspension of Dr. Frede's Illinois Physician and Surgeon License.

4. On July 11, 2012, the Medical Director of the Maine Board of Licensure in Medicine sent a letter to Dr. Frede, together with a copy of the Illinois "Consent Order", and requested that Dr. Frede provide "all details leading to his suspension, including but not limited to the medications involved, the circumstances under which they were issued, and the website involved and its current status."

5. On July 23, 2012, the Board received a letter from Dr. Frede dated July 17, 2012. In the letter, Dr. Frede indicated that he had acted as a consultant for a Health Service Agency (EasyMD.com) where "patients were connected by telephone after a history was obtained" and consultations "involved minor conditions, such as chronic migraine headaches." According to Dr. Frede, "if it was indicated, non-narcotic Rx's were given," including prescriptions for Fioricet, Soma and Tramadol. Dr. Frede stated that the Illinois Board considered these activities as "improper" and did not accept them as being "Telemedicine." As a result, he agreed to the suspension of his medical license in Illinois. Dr. Frede further stated that he is no longer

performing these types of activities and no longer acting as a consultant for EasyMD.Com.

6. On July 24, 2012, the Board staff obtained information about EasyMD.Com by visiting its website: <http://www.easy.md/>. According to information posted on that website, EasyMD.com is "the Internet division of a fully licensed overseas pharmacy" that sells "exact generic equivalents of US FDA approved prescription drugs." The website provides a list of available drugs for the treatment of multiple ailments from mental illness, cardiac and respiratory illnesses, gastrointestinal illnesses, neurological illnesses, skin diseases, sexual dysfunction, and hair loss. Potential patients visiting the website could reside anywhere in the world, and do not require a face to face visit or physical examination with a medical provider.

7. On November 12, 2002, the Maine Board of Licensure in Medicine adopted a policy regarding internet prescribing. This policy is posted on the Board's website: [http://www.docboard.org/me/administrative/dw\\_policy.htm](http://www.docboard.org/me/administrative/dw_policy.htm). The policy states in relevant part:

POLICY: It is the policy of the Board of Licensure in Medicine that prescribing, dispensing or furnishing a prescription medication or device to a person who is not an established patient and whom the physician has not personally examined may be unprofessional conduct subject to disciplinary action pursuant to 32 MRSA, §3282-A, 2, (f). This rule does not apply to admission orders for a newly hospitalized patient, prescribing for a patient of another physician for whom the prescriber is providing coverage, or continuing medication on a short-term basis prior to a new patient's first appointment. Prescribing medications based solely on answers to a questionnaire or a consult over the Internet for a patient the physician has never met is inappropriate and unprofessional conduct.

8. On September 11, 2012, the Board reviewed the foregoing information and voted to offer Dr. Frede this Consent Agreement in order to resolve this matter and preclude further proceedings and hearings.

9. This Consent Agreement has been negotiated by Dr. Frede and legal counsel for the Board in order to resolve this matter without further proceedings. Absent Dr. Frede's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before October 25, 2012, the Board will conduct further investigations and proceedings.

10. By signing this Consent Agreement, Dr. Frede waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification. Dr. Frede also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

#### COVENANTS

In lieu of further investigations and proceedings in this matter, Dr. Frede agrees to the following:

11. For the purposes of this Consent Agreement only, Dr. Frede neither admits nor denies the facts as outlined above but concedes that should the matter proceed to a contested hearing that the Board has evidence from which it could conclude by the preponderance of the evidence that his conduct

in prescribing drugs to patients whom he has never met nor physically examined could constitute incompetence and unprofessional conduct and grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(E) & (F).

12. As discipline for the conduct described in paragraphs 1-11 above, Dr. Frede agrees to the IMMEDIATE and VOLUNTARY SURRENDER of his Maine medical license effective upon the execution<sup>1</sup> of this Consent Agreement. Dr. Frede shall return the original of his Maine medical license to the Board within 30 days of the execution of this Consent Agreement.

13. Violation of any of the terms or conditions of this Consent Agreement by Dr. Frede shall constitute additional grounds for discipline, including but not limited to warning, censure, reprimand, fine, and any other penalty available by law.

14. Dr. Frede waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Frede agrees that this Consent Agreement and Order is a final order resolving the pending investigation before the Board. This Consent Agreement is not appealable and is effective until or unless modified or rescinded in writing by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

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<sup>1</sup> For the purposes of this Consent Agreement "execution" means the date on which the final signature is affixed to this Consent Agreement.

15. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Frede or any other matter relating to this Consent Agreement.

16. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408. This Consent Agreement constitutes disciplinary action that is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the Healthcare Integrity and Protection Data Bank (HIPDB).

17. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

18. Dr. Frede acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

**I, JAMES R. FREDE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.**

DATED:

10/2/2012

  
JAMES R. FREDE, M.D.



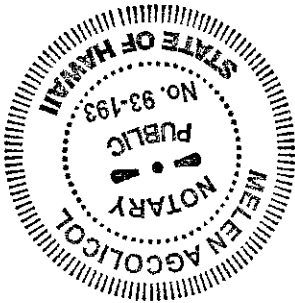
STATE OF Hawaii  
County of Maui, S.S.

Personally appeared before me the above-named James R. Frede, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 10/2/2012

Melen Agcolicol  
NOTARY PUBLIC/ATTORNEY  
Melen Agcolicol  
MY COMMISSION ENDS:

4/19/2013



STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 10/9/12

Gary R. Hatfield  
GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE OFFICE  
OF THE ATTORNEY GENERAL

DATED: 10/9/12

Dennis E. Smith  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date: 10/9/12